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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,809	12/05/2003	Daniel L. Shepherd	8029-A-1	1938
7590	09/13/2005		EXAMINER	
Jordan M. Meschkow Meschkow & Gresham, PLC Suite 409 5727 North 7th Street Phoenix, AZ 85014			THOMPSON, HUGH B	
			ART UNIT	PAPER NUMBER
			3634	
DATE MAILED: 09/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/729,809	SHEPHERD ET AL.
	Examiner Hugh B. Thompson II	Art Unit 3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 05 December 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 12-16 is/are allowed.

6) Claim(s) 1-11 and 17-20 is/are rejected.

7) Claim(s) 5 and 11 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12-5-03.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: 2 drawing sheets

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 6, 8-10, and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 3 and 18, the applicant has positively recited the combination of the brace and it's associated components and the guardrail system. Note that the relationship of the brace to the guardrail system is not a patentably distinct feature that is given no weight in the claims. Claim 6 recites a similar ambiguity with respect to the upright support of the unclaimed guardrail system. Claims 8 and 19 recite a similar ambiguity with respect to the vertical posts of the unclaimed scaffold.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7-10, 17, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Burt #1,880,767. Burt discloses a scaffold assembly comprised of parallel elongate members 12, supports 13, hook engaging means/brackets on either end of the member 12, the engaging

means having pins 19, 21, U-shaped arcuate member 22, which attach to vertical post members 1, and intermediate posts 23 (see the specification page 2, lines 35 and 36).

*Allowable Subject Matter*

Claims 12-16 are allowed.

Claims 5 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The primary reason for the allowable subject matter of claim 5 is the inclusion of a second post and first post spaced at different distances relative to the elongate member. For claim 11 it is the inclusion of the support aligned with the post when the support is perpendicular to both elongate members. For claim 12, it is the combination as claimed. The prior art of record fails to teach or suggest the claimed feature absent the applicant's own disclosure.

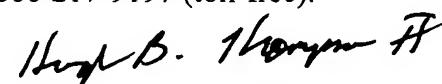
*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sciortino #6,634,823, Kang #6,892,503, Jewell #5,802,782, Hauber #3,749,429, Gethmann #3,392,801, Nail #4,782,914, and Delp #2,897,013 are cited to teach scaffold couplings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hugh B. Thompson II whose telephone number is (571) 272-6837. The examiner can normally be reached on Monday thru Friday 9 am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hugh B. Thompson II  
Primary Examiner  
Art Unit 3634

September 2, 2005

Oct. 4, 1932.

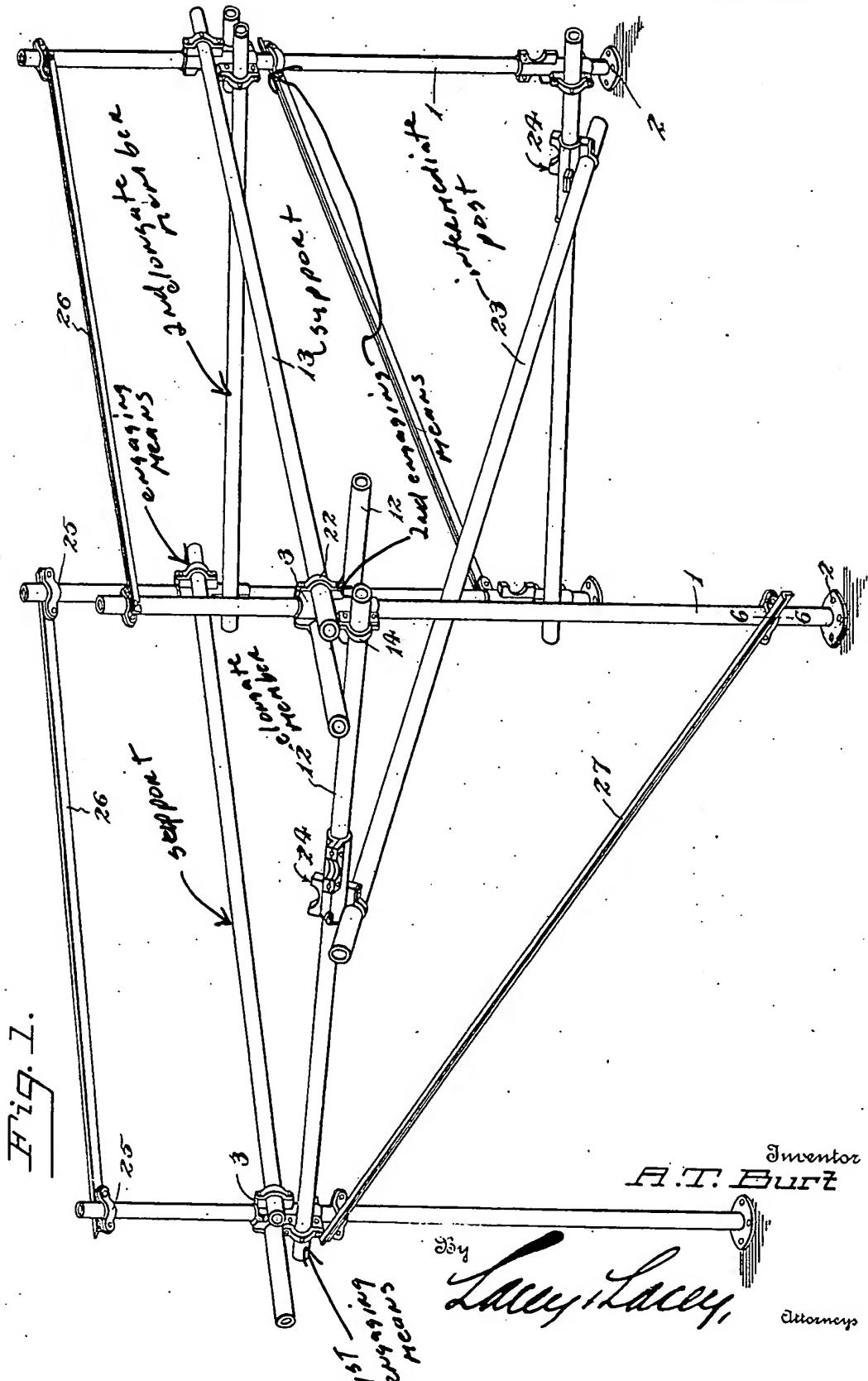
A. T. BURT

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## SCAFFOLD

Filed Oct. 9, 1930

2 Sheets-Sheet 1



9/6/05, EAST Version: 2.0.1.4

Oct. 4, 1932.

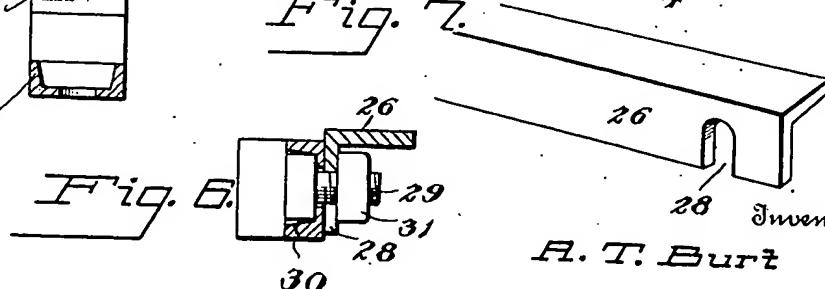
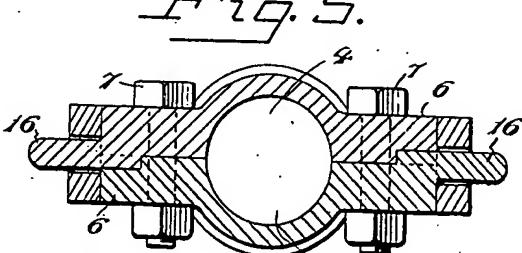
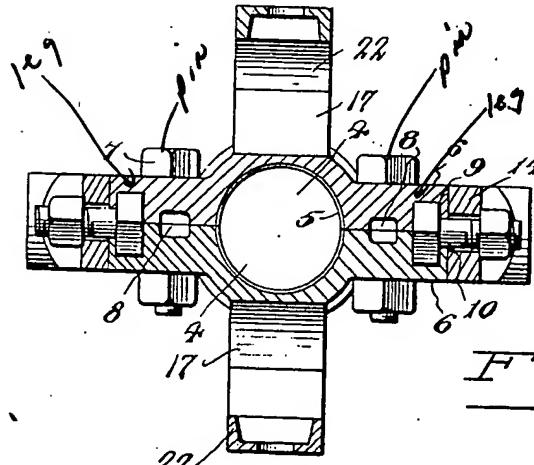
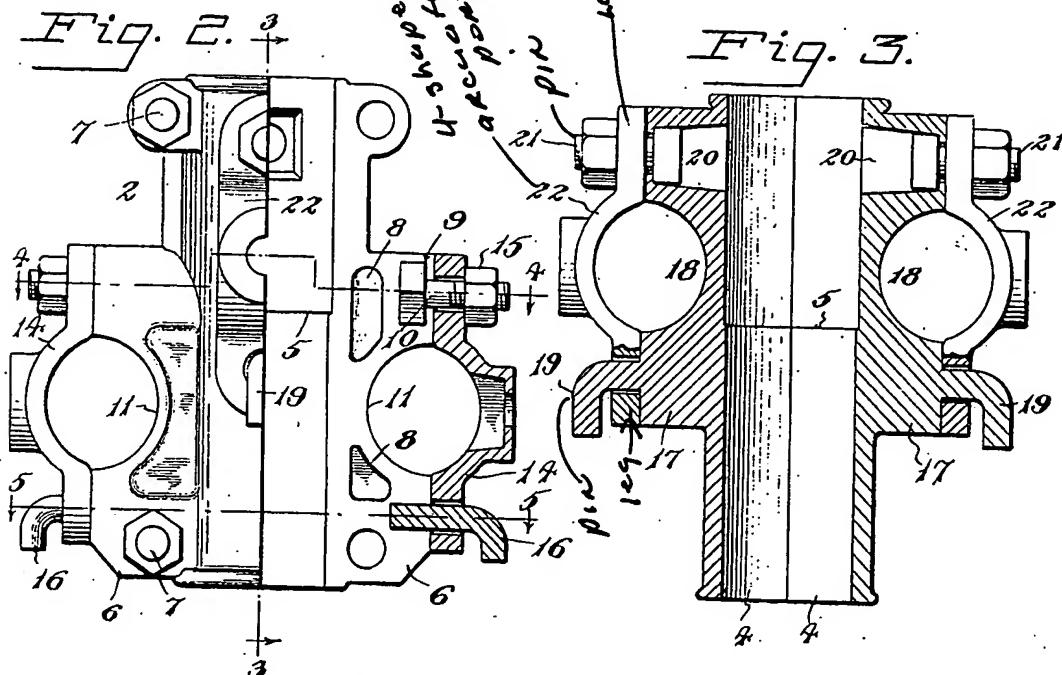
A. T. BURT

1,880,767

## SCAFFOLD

Filed Oct. 9, 1930

2 Sheets-Sheet 2



*R. T. Burt*

By Lucy Lacey

Attorneys